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January 25, 2001

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
ATTN: Network Services Division,
Common Carrier Bureau

RECEIVED

SEP 27 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Regionet Wireless Licensee LLC, Request for Partial Waiver
of 711 Dialing Code Requirement

Dear Secretary Salas:

Pursuant to Section 1.3 of the Rules and Regulations of the Federal Communications Commission, Regionet Wireless Licensee LLC ("Regionet") respectfully requests a waiver of Section 64.603 of the Commission's rules for the portion of Regionet's Automated Maritime Telecommunications System ("AMTS") service described below. This rule will require Regionet to provide, not later than October 1, 2001, access via the 711 dialing code to Telecommunications Relay Services ("TRS") as a toll free call. This section of the rules was implemented by the Commission in response to Title IV of the Americans with Disabilities Act of 1990 ("ADA").¹

I. Background

Regionet provides, *inter alia*, AMTS service throughout the coastal zones and inland waterways of the United States. AMTS is a commercial mobile radio service. The inland waterways service formerly was provided by Waterway Communications System, LLC ("WATERCOM"). Regionet's parent, Mobex Communications, Inc., acquired WATERCOM in 2000; and assignment of the WATERCOM license authorities to Regionet was approved in December 2000.

¹ 42 U.S.C. § 12101, *et. seq.*

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This waiver request concerns only Regionet's inland system ("Inland System"), i.e., the former WATERCOM system, which serves the Mississippi, Illinois and Ohio Rivers and the Gulf Intracoastal Waterway.² The Inland System is distinct, from a technology and operations standpoint, from the coastal systems installed by Regionet. The Inland System was constructed in 1985-1986, and essentially relies upon the infrastructure and architecture installed at that time.

Regionet's Inland System was established, in essence, to meet the needs of the commercial barge and towing industry.³ Regionet has approximately 1,000 subscriber units installed on vessels operating along the inland waterways. Ninety-nine percent (99%) of Regionet's Inland Service is utilized by the barge and towing industry. Other customers consist of 4 commercial passenger vessels operating on the inland waterways, and several working vessels of the United States Corps of Engineers.

As a result of the Commission's recent Report and Order addressing 711 dialing access,⁴ Regionet is subject to Commission's rule mandating access to the Telecommunications Relay Service ("TRS"). Specifically, Regionet must provide – no later than October 1, 2001 – access via the 711 dialing code to TRS as a toll free call.⁵ The *711 Order* specifies that all "wireline, CMRS carriers, and payphone providers" are responsible for implementing access to 711 dialing.⁶

II. Request for Rule Waiver

Regionet seeks a WAIVER of §64.603 of the Commission's rules with regard to Regionet's Inland System for its service to commercial vessels, including vessels operated by the Corps of Engineers or other government agencies. Regionet does not seek a waiver with regard to its Inland System service to passenger vessels, or with regard to its other AMTS services.

The standard applied by the Commission to judge rule waiver requests is that such requests will be favorably considered where the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested

² The AMTS stations are licensed under the call signs WHG 693 701-703 705-754.

³ See *Inland Waterways Communications System*, GEN Docket No. 80-1, 84 F.C.C. 2d 875 (1981) (now known as the Automated Maritime Telecommunications System).

⁴ *711 Dialing for Nationwide Access to Telecommunications Relay Services*, CC Docket No. 92-105, 65 Fed. Reg. 54,799 (Sep. 11, 2000) ("711 Order").

⁵ 47 C.F.R. § 64.603.

⁶ *711 Order* at ¶26.

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waiver would be in the public interest *or*, in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁷ Regionet submits that the circumstances described below satisfy both aspects of the rule waiver standard.

III. Discussion

A. The Underlying Purpose of the Rule Would Not Be Served.

The *711 Order* was "initiated in order to improve the uniformity and efficiency of services provided through TRS *for the benefit of TRS users and members of the general public with whom they communicate.*"⁸ Regionet supports the Commission's goals; and to the extent that its services are utilized by members of the general public, whether through its coastal zone service or its Inland System to passenger vessels, Regionet intends to comply with the *711 Order*. The commercial operating environment on the inland waterways, however, is entirely different; and application of the *711 Order* to commercial operations on the inland waterways would not serve to further the goals of the ADA and the *711 Order*.

The environment of towing (and other commercial or working) vessels is inherently hazardous. In addition, the engines are noisy, and lashing barges together to comprise a towing unit is physically demanding. Towing vessels operated on the inland waterways are populated by both licensed and unlicensed individuals. Licensed individuals include pilots and captains, and unlicensed individuals included deckhands and certain engineering positions. The United States Coast Guard is the licensing agency.

Although the *711 Order* was implemented as a result of the ADA, notably the ADA does not override health and safety requirements established under other Federal laws. This is even the case if a standard adversely affects the employment of an individual with a disability. Furthermore, the ADA does not override bona-fide occupational qualifications for employees.⁹

A qualified individual with a disability is a person who not only possesses legitimate skill, experience and education requirements of an employment position that s/he holds or seeks, but also, one who can perform the *essential functions* of the position with or without reasonable

⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983).

⁸ *711 Order* at ¶24 (emphasis added).

⁹ 42 U.S.C. § 12112; See also, 42 U.S.C. § 12111(8).

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accommodation.¹⁰ Requiring the ability to perform "essential" functions ensures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions.

1. Relevant USCG Regulations and Guidelines Addressing the Bona Fide Occupation Qualifications For Employment of Licensed Personnel.

The USCG has numerous regulations and guidelines addressing the physical requirements necessary for licensed mariners. The first of these is the Marine Safety Manual (the "Manual"). The relevant portion of the Manual provides guidance to physicians who are completing the Merchant Marine Personnel Physical Examination Report, Form CG-719K (attached herewith as Exhibit 1). The Manual states that "[t]he conditions discussed in this chapter are considered to be potentially disqualifying for the purpose of obtaining a license."¹¹

While the USCG states that the condition in and of itself may not be a disqualifying factor, a waiver must be obtained in the event such a condition exists. The Manual also states that the listed requirements "are not intended to be absolute or all-encompassing."¹² Thus, an applicant could be disqualified for an unlisted characteristic. The Manual goes on to identify hearing infirmity as a potentially disqualifying condition and establishes various standards that must be met.¹³ While it is possible to obtain a hearing waiver for certain job listings, it will only be granted if minimum auditory requirements are met. Additionally, the Manual specifically identifies the ability to "hear telephone bells/buzzers . . . without aid in the engine room" as a prerequisite for licensed workers in the engineering department.¹⁴

Furthermore, the Manual identifies the Navigation and Vessel Inspection Circular Number 2-98 ("NVIC 2-98") as a source of additional guidance for doctors conducting evaluations.¹⁵ The NVIC 2-98 provides guidelines for evaluating the physical condition of an applicant for a merchant marine license or document. It also acknowledges that while various regulations in 46 C.F.R. require individuals to be physically qualified – or "fit for duty," the guidelines are somewhat vague.¹⁶ However, one of the most telling portions of the document states:

¹⁰ 42 U.S.C. § 12111(8).

¹¹ *Marine Safety Manual. Physical Requirements For Mariners*, Volume 3, Chapter 4, at 4-1.

¹² *Id.*

¹³ *Id.* at 4-3.

¹⁴ *Id.*

¹⁵ *Manual*, at 4-1.

¹⁶ Navigation and Vessel Inspection Circular No. 98-2, at 1 (stating that the regulatory requirements are not specified).

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For a vessel to be operated safely, it is essential that the crewmembers be physically fit and free of debilitating illness and injury. The seafaring life is arduous, often hazardous, and the availability of medical assistance or treatment is generally minimal. As the international trend towards smaller crews continues, *the ability of each crewmember to perform his or her routine duties and respond to emergencies becomes even more critical.*¹⁷

The NVIC 98-2 then identifies various disqualifying characteristics for mariners, which include hearing and speech impediments. The NVIC 98-2 identifies a speech impediment, "such as lisping or stuttering which would impede communication in an emergency situation,"¹⁸ as a potentially disqualifying characteristic. While hearing and speech are obviously the most pertinent to the *711 Order*, the NVIC 98-2 goes on to list countless other disabilities that – while clearly falling under the protection of the ADA – are potentially disqualifying.¹⁹

Because the ADA does not override health and safety requirements established under other Federal laws, the USCG regulations are valid guidelines for determining who is eligible to work aboard seafaring vessels. Accordingly, due to the employment limitations placed upon the hearing and speech disabled, there is little likelihood that TRS will be required by crew members aboard commercial vessels served by Regionet's AMTS Inland System.

2. Occupational Guidelines Addressing the Employment of Unlicensed Personnel.

As noted in the USCG guidelines, in order for a vessel to be operated safely it is "essential" that the crewmembers be physically fit and free of debilitating illness and injury. Further, the USCG observes that the ability of *each* crewmember to perform even "routine duties" and respond to emergency situations is a "critical" requirement.²⁰ While the USCG regulations do not dictate requirements for the hiring of unlicensed personnel, the unlicensed personnel must respond to critical situations in the same manner as licensed personnel.

¹⁷ Navigation and Vessel Inspection Circular No. 98-2, at 2 (emphasis added).

¹⁸ *Id.* at 7.

¹⁹ For example, the NVIC 98-2 lists the following as potentially disqualifying characteristics: orthopedic disabilities (e.g. amputations, deformities or arthritis), diabetes, neurologic disabilities (e.g. parkinson's disease, chorea, neurosyphilis, etc.), hematologic disabilities (e.g. leukemia, hemophilia), allergies and psychiatric disabilities (e.g. mental retardation, drug or alcohol addiction).

²⁰ NVIC 98-2 at 2.

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While standard employment in other sectors of the American economy have various "essential functions," the particular attention which maritime employers must place upon safety requirements can simply not be understated. In light of the demanding requirements placed upon crewmembers – whether licensed or unlicensed, companies operating in the marine community customarily establish job requirements for the performance of "essential functions" while serving on board vessels.²¹ In consideration of the need to perform effectively in a crisis or emergency situation, the ability of unlicensed personnel to hear and speak effectively is essential.

The American Waterway Operators ("AWO"), the national trade association of the barge and towing industry, has stated that "[o]ur industry is very different from most industries and land-based operations – it has many inherent dangers and a unique environment that calls for physical capabilities."²² Additionally, AWO states that "[g]iven the legal requirements of providing a seaworthy vessel, it is particularly important for maritime employers to be able to identify a qualified and non-dangerous applicant."

Regionet is aware that some inland commercial customers have instituted specific hearing and speech requirements meeting the "essential functions" criteria of the ADA. For example, the American Commercial Barge Line, the largest inland barge and towing service operator, has established minimum standards for hearing imposed for its unlicensed deckhands. AWO notes that with regard to deckhand duties – which are unlicensed positions – the specter of safety concerns is clearly raised.²³

For the reasons set forth above, it is clear that the underlying purpose of the *711 Order* would not be served through equipping the Regionet AMTS Inland System serving commercial vessels with 711 access capability. Bona-fide occupational qualifications established for licensed and unlicensed vessel personnel require sufficient speech and hearing capability to the effect that employees operating or working on said vessels are not within the class intended to be served by the *711 Order*.

²¹ See 42 U.S.C. § 12111(8) (discussing the necessity of a qualified individual to perform essential functions); See also, 42 U.S.C. § 12113(a) (establishing the inability to perform such job related functions consistent with business necessity as a defense to any ADA discrimination claim).

²² Boucher, Jennifer, *The ADA's Impact on Maritime Employers*, Presented to the Fifth Annual Midwest Conference On Marine Claims and Insurance, June 24, 1993 at 6.

²³ *Id.* at 2.

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B. Application of the Rule Would Be Inequitable, Unduly Burdensome and Contrary to the Public Interest.

Due to the architecture of Regionet Inland System, compliance with the *711 Order* would require upgrading of each vessel station installation.²⁴ The system architecture is such that the vessel stations are not designed or programmed to accommodate abbreviated dialing codes.²⁵ Consequently, to accommodate the 711 dialing requirement, it would be necessary for Regionet to effect an on-site modification at each of the approximate 1,000 inland AMTS vessel or mobile stations. Commercial towing vessels typically remain continuously in motion, pausing only while assembling or discharging the barges being transported. Crew changes, grocery and supply re-stocking and fueling typically are accomplished through mid-stream service, with the transfers accomplished while the boats are in motion. Similarly, service calls for vessel electronics, whether the AMTS unit, radars or other equipment, also are performed mid-stream, while the vessels are in motion. Such service calls are extremely expensive, ranging up to approximately \$500 per vessel. Regionet estimates that the cost of retrofitting the customer equipment to comply with the *711 Order* could amount to approximately \$400,000. This would constitute a substantial financial burden on a specialized service such as that rendered by Regionet.

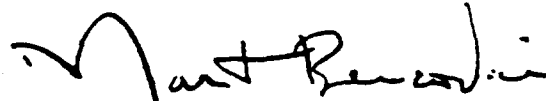
²⁴ To the extent the coast stations require upgrading, that can be accomplished through a download from the Operations and Control Center.

²⁵ The AMTS is exempt from the 911 dialing code requirement, given that vessels operate on the waterways where the response agency is the coast guard rather than a local police, fire or emergency medical service agency which may be located thirty or forty miles from the vessel, and whose only nexus with the vessel is the happenstance of being located in the same community as the Regionet shore station serving the vessel at that particular point in time. *Enhanced E-911 Emergency Calling Systems* 11 FCC Rcd 18676, 18717-718 (1996).

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In conclusion, Regionet Wireless Licensee LLC respectfully submits that application of the *711 Order* to its Inland System commercial customer base would be an act in futility, and further would constitute a substantial burden upon the company without conferring commensurate benefits upon the user community. Regionet otherwise intends to comply with the *711 Order* with regard to its Inland System passenger vessel customers, as well as its non-inland services. Accordingly, Regionet Wireless Licensee LLC hereby requests waiver of Section 64.603 of the Commission's rules as described above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici". The signature is stylized with a large initial "M" and a long, sweeping underline.

Martin W. Bercovici
Attorney for Regionet Wireless Licensee LLC

MERCHANT MARINE PERSONNEL PHYSICAL EXAMINATION REPORT

PRIVACY ACT STATEMENT

As required by 5 USC 552a(e)(3), the following information is provided when supplying personal information to the U. S. Coast Guard

- 1 Authority for solicitation of the information. 46 USC 2104(a), 7101(c)-(e), 7306(a)(4), 7313(c)(3) 7317(a), 8703(b), 9102(a)(5).
(See 46 CFR subparts and paragraphs 10.205(d), 10.207(e), 10.209(d), 12.05-5 12.20-3)
- 2 Principal purposes for which the information is used.
 - (1) To determine if an applicant is physically capable of performing shipboard duties
 - (2) To ensure that the applicant's physical is conducted by a duly licensed physician/physician's assistant and to verify the information as needed
- 3 The routine uses which may be made of this information:
 - (1) This form becomes part of the applicant's file as documentary evidence that the regulatory physical requirement has been satisfied and the applicant is physically competent to hold a merchant marine license or document.
 - (2) This information becomes part of the total license or document file and is subject to review by federal agency casualty investigators
- 4 Disclosure of this information is voluntary; but failure to provide this information will result in non-issuance of a license or merchant mariner's document

INSTRUCTIONS FOR THE PHYSICIAN

The United States Code requires a physical examination to determine that all holders of Coast Guard issued Licenses and Merchant Mariner's Documents are of sound health with no physical limitations that would hinder or prevent performance of duties. In general, all mariners must be capable of working in cramped spaces on rolling vessels. They must be able to climb steep stairs or vertical ladders. In an emergency such as a vessel fire or flooding, the mariner must be able to fully participate in the firefighting and lifesaving of passengers and crewmembers. In addition, mariners must be physically able to stand an alert 4 to 8 hour watch. To do this, they must be free from any sudden onset of a medical condition which would affect their watchkeeping abilities.

Detailed guidelines on potentially disqualifying medical conditions may be obtained from any U. S. Coast Guard Regional Examination Center (NVIC 2-98) or by calling Coast Guard National Maritime Center (NMC-4C), at 703-235-8483. Examples of impairment that could lead to disqualification include: impaired vision, color vision or hearing; poorly controlled diabetes; multiple or recent myocardial infarctions; psychiatric disorders; and convulsive disorders. In short, any condition that poses an inordinate risk of sudden incapacitation or debilitating complication, and any condition requiring medication that impairs judgment or reaction time are potentially disqualifying and will require a detailed evaluation.

The Coast Guard will use this physical evaluation to determine the applicants eligibility to hold a license or document.

1. Name (Last, First, MI)				2. Social Security Number	
3. Height (inches)	4. Weight (pounds)	5. Eye Color	6. Hair Color	7. Distinguishing Marks	
8. Blood Pressure Systolic Diastolic			9. Pulse (resting) _____ <input type="checkbox"/> Regular <input type="checkbox"/> Irregular		
10a. Vision: Uncorr. Right 20/ Corr. to 20/ Uncorr. Left 20/ Corr. to 20/			10b. Field of Vision: _____ Degrees <input type="checkbox"/> Normal <input type="checkbox"/> Abnormal		
11. Color Vision <input type="checkbox"/> Normal <input type="checkbox"/> Abnormal * Color sense must be tested by one of the following. * Color sensing lenses are prohibited.					
Pseudoisochromatic plates		Eldridge - Green Perception Lantern		SAMCTT - School of Aviation Medicine	
Divonne 2nd Edition	ARC	Farnsworth Lantern		Titmus Optical Vision Test	
AOC Revised Edition	AOC-HRR	Keystone Orthoscope		Williams Lantern	
Ishihara 16-, 24-, 38- Plate Ed		Keystone Telebinocular			
12. Hearing <input type="checkbox"/> Normal <input type="checkbox"/> Impaired					
An audiometer and speech discrimination tests are only required if the applicant has, or is suspected to have impaired hearing.					
Audiometer (Threshold Values)	500 (Hz)	1000 (Hz)	2000 (Hz)	3000 (Hz)	Functional Speech Discrimination Test at 55 db Left Ear _____ % Right Ear _____ %
Right Ear					
Left Ear					External Auditory Canal <input type="checkbox"/> Normal <input type="checkbox"/> Abnormal
Right Ear - aided					
Left Ear - aided					
13. Indications of current or past Drug/Alcohol Abuse <input type="checkbox"/> Yes <input type="checkbox"/> No if yes explain in Block 16					

The Coast Guard estimates that the average burden for this is 5 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestion for reducing the burden to: Commanding Officer National Maritime Center (NMC-4C), 4200 Wilson Blvd, Suite 510, Arlington, VA 22203-1804 or Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for DOT/USCG, Old Executive Office Building, Washington, DC 20593

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14. Doctor's assessment - Does the applicant have or has he/she ever suffered from any of the following? *If yes explain in Block 16.								
Yes	No		Yes	No		Yes	No	
		Deteriorating eye disease			Severe digestive disorder			Periods of unconsciousness
		Severe speech impediment			Chronic renal failure			Sleepwalking
		Diabetes			Communicable disease			Recent or repetitive surgery
		Thyroid dysfunction			Asthma or lung disease			Amputations
		Epilepsy, seizures, paralysis			Psychiatric disorder			Impaired range of motion
		Heart or vascular disease			Depression			Impaired balance or coordination
		Heart surgery			Attempted suicide			Other illness or disability
		Blood disorder			Loss of memory			
		High blood pressure			Dizziness or fainting			

15. Medications taken: include dosage, purpose, and side effects.

No prescription medications ☐

16. Comments on Findings:

No Significant Medical History ☐

Considering the findings in this examination, and noting the duties to be performed by the applicant aboard a merchant vessel of the United States of America, I consider the applicant

☐ competent

☐ needs further evaluation

☐ not competent

Printed/Typed Name of Physician/Physician's Assistant/Nurse Practitioner	OFFICE ADDRESS (ZIP CODE)
State License Number	
Telephone	
Physician/Physician's Assistant /Nurse Practitioner Signature	Date
I certify that all information provided by me is complete and true to the best of my knowledge.	
Signature of Applicant	Date

The Coast Guard estimates that the average burden for this is 5 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestion for reducing the burden to: Commanding Officer National Maritime Center (NMC-4C), 4200 Wilson Blvd, Suite 510, Arlington, VA 22203-1804 or Office of Management and Budget, Office of information and Regulatory Affairs, Attention: Desk Officer for DOT/USCG, Old Executive Office Building, Washington, DC 20593